tion of peril; nor could such a conclusion be drawn from the knowledge of her father that she had been sent there on the errand above mentioned. Even though the son *did* represent the father who was a representative of the corporation in this latter case, there are other facts and circumstances that would not justify a finding of a dual relation.

MONOPOLIES—RIGHT TO RECOVER ON MONOPOLISTIC CONTRACT.—The plaintiff is a corporation composed of nearly all the manufacturers of wall paper in the United States. Under the agreement forming the combination the plaintiff was enpowered to fix the prices at which goods were to be sold, and to compel jobbers to buy at such prices. In pursuance of this purpose the defendant, a jobbing house, and practically all other jobbers were forced to sign contracts binding themselves to buy paper only from the plaintiff and at the rates fixed. The defendant refused to pay for a quantity of paper so ordered and used. Upon an action for goods sold and delivered, *held,* (Mr. Justice MOODY, Mr. Justice BREWER, Mr. Justice WHITE and Mr. Justice PECKHAM, dissenting), that a recovery could not be had. *Continental Wall Paper Company* v. *Louis Voight & Sons Company,* (1909), 29 Sup. Ct. 280.

The majority opinion is based upon the ground that the plaintiff exists in violation of the Sherman anti-trust law of July 2, 1890, (26 Stat. at L. 209, chap. 647, U. S. Comp. Stat. 1901, p. 3200), and for the court to give judgment in its favor in this action would be to lend judicial aid toward making effective the illegal agreements that constituted the illegal combination. *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 22 Sup. Ct. 431, a leading case in the same court and based on similar facts, is distinguished on the ground that in the latter case the defendant was wholly a stranger to the illegal combination and had nothing to do with the original agreement, and could not be heard to refuse payment solely upon the theory that the plaintiff was illegal in character. In considering a transaction of this nature, all the circumstances may be reviewed and the original contract taken into account as forming a part of the nature of the contract sued upon. *Swift & Co.* v. *United States,* 196 U. S. 375; 25 Sup. Ct. 276; *Aikens* v. *Wisconsin,* 195 U. S. 194, 25 Sup. Ct. 3; *E. Bement & Sons* v. *National Harrow Co.,* 186 U. S. 70, 22 Sup. Ct. 747; *Loewe* v. *Lawlor,* 208 U. S. 274, 28 Sup. Ct. 301. Mr. Justice MOODY, for the minority, holds that the original contract had nothing to do with the question under consideration, that the whole business here concerned was done by later acts, and that the illegal character of the plaintiff did not warrant the defendant in professing to buy its goods and then refusing to pay for them. Despite the attempted distinction in the main opinion, *Connelly* v. *The Pipe Co.,* supra, is practically overruled. *Chattanooga Foundry & Pipe Works* v. *Atlanta,* 203 U. S. 390, 27 Sup. Ct. 65, too, seems to enunciate a contrary doctrine. In the case of *Monongahela Nat. Bank* v. *Stephens,* 111 U. S. 197, and again in the recent case of *Texas & P. R. Co.* v. *Abilene Cotton Oil Co.,* 204 U. S. 426, 27 Sup. Ct. 350, the rule was laid down that the statutory remedy is exclusive. As brought out by Mr. Justice BREWER in a separate opinion in

the principal case, not one of the three statutory remedies permitted here was resorted to by the defendant. Apparently then the case is a radical departure from former holdings. Its effect can only be guessed at.

MUNICIPAL CORPORATIONS—VACATING STREETS—CURATIVE STATUTES.—The city council of Montgomery, without any express authority from the legislature, attempted to authorize the defendant railway company to construct its freight house across the foot of a street. Subsequently the legislature passed an act ratifying "all grants, rights, privileges, and franchises, heretofore granted, or attempted to be granted, to railroads, by the city council of Montgomery." In a suit by the State, against the railroad to force it to remove the freight house, *held,* that the original act of authorization by the city council was void, but that the subsequent act of the Legislature was valid and operated retrospectively to validate the void ordinance. *State ex rel. Attorney General* v. *Louisville and N. R. Co.,* (1909), — Ala. —, 48 South. 391.

That a municipal corporation may not, without express legislative authority, dispose of its streets to private persons is almost universally conceded, (20 AM. AND ENG. ENCY. LAW, Ed. 2, p. 1188, though see *Tomlin* v. *Cedar Rapids and Iowa City Ry. and Light Co.,* (1909), — Iowa —, 120 N. W. 93, where the contrary is held by a divided court. That the legislature has the power to vacate a street in a city for any purpose, or to authorize the city to do so, seems to be equally well settled. ELLIOTT, ROADS AND STREETS, Ed. 2, 959. The real question then is as to the power of the legislature to validate a void city ordinance. When the invalidity of the ordinance arises merely from some irregularity or want of formality in its passage, the authorities seem to be agreed that a curative statute will be valid. *Town of Fox* v. *Town of Kendall,* 97 Ill. 72; *Mason* v. *Spencer,* 35 Kan. 512, 11 Pac. 402. Where, however, as in the principal case, the ordinance in question was absolutely unauthorized and ultra vires, a different situation would seem to be presented. At least one very respectable court holds, with what would seem to be the better reasoning, that such an ordinance, being void, is in fact non-existent and is in consequence absolutely incapable of ratification. *In re Inglis,* 8 Ont. L. R. 570. And in Illinois it has been decided that a particular ordinance cannot be ratified by a general statute authorizing the enforcement of all ordinances "heretofore made upon the subject." *Chicago* v. *Rumpff,* 45 Ill. 90, 92 Am. Dec. 196. However, the great weight of American authority appears to hold with the principal case that, whenever the legislature might originally have conferred the power to pass an ordinance, it may legally ratify such an ordinance after its passage. *Nottage* v. *Portland,* 35 Ore. 539, 58 Pac. 883, 76 Am. St. Rep. 513. 28 CYC. 376.

OFFICERS—VACANCY IN OFFICE.—One A having been committed to jail by B, a Justice of the Peace, petitioned for habeas corpus on the ground that B was not rightfully in office. B had been appointed Justice of the Peace to fill an alleged vacancy which arose by the death of C. C, who had been duly elected to the office in question, and who had filed his oath and bond, died before the commencement of the term for which he was elected, and B was